Supreme Court, U. S.
FILED
APR 23 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1441

KEVIN H. WHITE,
Mayor of the City of Boston,

Petitioner,

—v.—

TALLULAH MORGAN, *et al.*, and
JOHN J. KERRIGAN, *et al.*,

Respondents.

BRIEF AMICI CURIAE OF CITY OF CLEVELAND AND CITY OF WILMINGTON IN SUPPORT OF PETITION FOR CERTIORARI OF MAYOR WHITE

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Filing Pursuant to Rules 42(1) and (4)

This brief Amici Curiae in support of the petition for certiorari of Kevin H. White, Mayor of the City of Boston, is filed by the City of Cleveland, Ohio, and the City of Wilmington, Delaware, pursuant to Supreme Court Rules 42(1) and (4).

Interest of Amici

Amici curiae are major cities. Amici are, or may soon be, in a position similar to that presently faced by the City of Boston. Specifically, Amici are committed to full protection of the constitutional rights of school children within

their cities. It is also incumbent upon Amici to preserve their increasingly fragile urban structures. As the petition of the Mayor of Boston demonstrates, our cities are concerned, quite legitimately, with the nature of the considerations used by lower courts in fashioning remedies in school desegregation cases. While the specific facts vary from city to city, Amici are concerned that lower courts are imposing unnecessarily burdensome desegregation plans which are neither constitutionally necessary nor reflect the practicalities of the situations. For this reason, Amici's interests are similar to those of Mayor White, petitioner herein.

Specific statements of the Amici appear in the Appendix hereto at page 1a.

Questions Presented

1. Whether the lower courts of the United States must consider, in choosing among constitutionally adequate remedies to desegregate urban school systems, factors such as cost, amount of busing, community acceptance, and potential for resegregation, in addition to the racial balance of the schools?

2. Whether the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.*, requires lower courts, in choosing among constitutionally adequate school desegregation plans, to adopt the plan which requires the least amount of busing?

Statement

For the reasons outlined in the Appendix relating to the interest of each Amicus, the cities appearing as Amici share the concern of the Mayor of Boston that lower courts, misinterpreting this Court's decisions, have required and continue to require radical remedies to eradicate school segregation where more moderate remedies will do. Specifically, Amici are concerned that, in an increasing number of instances, the lower courts have failed or refused to consider such factors as cost, amount of busing, community acceptance, and potential for resegregation of the schools in choosing among a number of constitutionally adequate plans. Amici are also concerned because Congress, in passing the Equal Employment Opportunity Act of 1974, 20 U.S.C. §§ 1701 *et seq.*, has found that excessive busing is both educationally counter-productive and unfairly burdensome to our school children, yet lower courts have ignored that command of the Act.

For these reasons, Amici Curiae herein support the views of Mayor White of Boston and respectfully suggest that the issues presented to this Court by his petition are of national significance, affecting as they do virtually every metropolitan area in this nation. These issues are of great and growing importance to the future of meaningful school desegregation. They are worthy of this Court's consideration in depth and on the merits.

Conclusion

For the foregoing reasons, Amici Curiae respectfully urge that this Court grant the Petition for Certiorari of the Mayor of Boston and schedule this case for argument on the merits.

Respectfully submitted,

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APPENDIX

1. Interest of the City of Cleveland.

At the present time, an action is pending in the United States District Court in Cleveland against the Cleveland Board of Education to require massive reassignment of pupils on a racial basis. The evidence has been submitted and the case is awaiting the decision of District Judge Battisti.

The City of Cleveland is a separate legal entity under Ohio law from the Cleveland Board of Education, which has its own elected Board and independent financial structure. The City of Cleveland is not a party to the litigation against the Cleveland Board of Education. Nevertheless, the City, and its Mayor Ralph J. Perk, are concerned by the potential burden to the City which could result from the school litigation.

The legal position of the Cleveland Board of Education is that it has taken all feasible and reasonable steps short of massive pupil reassignment and consequent busing of students, to bring about truly integrated education. It is also the position of the Cleveland Board that such massive pupil reassignment and resultant unnecessary busing is not constitutionally required and would lead to resegregation, racial polarity, and substantial white flight.

In the event the trial court should rule against the Cleveland Board of Education on the liability phase of the litigation, the trial court will then consider appropriate remedies. Cleveland is concerned that any such remedy both protect the constitutional rights of its school children and consider the cost, amount of busing, and potential for resegregation. An unnecessarily broad court order in Cleveland

would create serious problems of police and fire protection, traffic control and potential loss of population with a consequent decline in its tax base. It would also impose serious new costs upon the finances of Cleveland that the City can ill afford to bear.

2. Interest of the City of Wilmington.

On March 27, 1975, a three-judge panel of the United States District Court for the District of Delaware found, based upon the standards laid down by this Court in *Milliken* v. *Bradley,* 418 U.S. 717 (1974), that "substantial governmental involvement," including the unconstitutional exclusion by the Delaware General Assembly of the Wilmington School District in its entirety from the reorganization of New Castle County school districts effected by the State Board of Education in 1968, authorized the imposition of a County-wide, interdistrict remedy for the desegregation of County schools. *Evans* v. *Buchanan,* 393 F. Supp. 428 (1975). This Court summarily affirmed. *Buchanan* v. *Evans,* —— U.S. —— (No. 75-1418, November 17, 1975). Together, these decisions set the stage for lengthy hearings as to appropriate remedy, which hearings commenced on October 20, 1975, and did not conclude until February, 1976. The District Court's decision as to remedy is now imminent.

Although the City of Wilmington is not a party to the *Evans* litigation, it shares in principle with the City of Boston the status of a defendant to the extent that certain of the proposed remedies in the Delaware litigation portend unsettling and deleterious social, economic and educational effects on the City without constitutional justification.

In its instructions to counsel governing the content of post-remedy hearing briefs, the District Court in *Evans*

directed that each party discuss the interrelationship between the plan or plans which it espouses and the provisions of 20 U.S.C. §§ 1701 *et seq.* Said provisions embody the Congressional mandate that a District Court should only impose busing as a last resort to remedy unconstitutional " . . . vestiges of the dual school system." 20 U.S.C. § 1713. Implicit in certain of the plans and in the post-remedy hearing brief submitted in support thereof by parties plaintiff in response to the Court's directive is the view that the priorities as to remedy established by Congress constitute a meaningless veneer which in no way clouds their view that a finding of interdistrict segregation patterns *ipso facto* justifies massive busing of pupils. Indeed, plaintiff Wilmington Board of Education, in its opening post-remedy hearing brief, specifically cites the District Court to the findings of Judge Garrity in *Morgan* v. *Kerrigan* as support for the proposition that no court need give serious consideration to less disruptive or more voluntary remedies, or combinations thereof, to which Congress has mandatorily directed our attention, because "They won't work."

As with Boston, the City of Wilmington has a concerted interest in the adoption of a remedy which minimizes the threat of disruption to both the social order and the educational process, and the further erosion of urban economic stability. This interest is wholly without protection if our district courts are granted unbridled authority to ignore the mandate of Congress as set forth in the Equal Educational Opportunities Act of 1974.